171

Supreme Court, U.S.
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No. 10-424

In The

Supreme Court of the United States

SHIRLEY RICHEY BLOME,

Petitioner,

vs.

STATE OF MONTANA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

SHIRLEY RICHEY BLOME
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QUESTIONS PRESENTED

Question One: Did the lower courts err when they granted or affirmed the defendant's 12(b)(6) Motion to Dismiss the plaintiff's original complaint?

Question Two: Did the defendant violate the Speedy Trial Act of 1974 when trial on the merits failed to begin within the time prescribed by the Act?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
BASIS FOR JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
INTRODUCTION	3
STATEMENT OF THE CASE	3
REASONS TO GRANT THE PETITION	5
Reason 1: Review Is Necessary To Give Authority To The Plain Language Of Rule 8 Of The Federal Rules Of Civil Procedure	5
Reason 2: Review Is Necessary To Give Authority To This Court's Holding That A Criminal Defendant Has A Statutory Right To A Speedy Trial And To Effect Adherence By Lower Courts To The Holding Of This Court In *Zedner v. United States* And *Friemann v. United States*	8
CONCLUSION	12

TABLE OF CONTENTS – Continued

Page

APPENDIX

Ninth Circuit Court Order ..... App. 1

District Court Judgment in a Civil Case ..... App. 2

Order Adopting Findings And Recommendations Of U.S. Magistrate Judge ..... App. 3

Findings And Recommendation Of United States Judge To Grant Defendant's Motion To Dismiss ..... App. 6

TABLE OF AUTHORITIES

Page

CASES

American Tobacco Co. v. Patterson, 456 U.S. 63 (1982) 10

Anastasoff v. United States, 223 F.3d 898 (8th Cir. 2000) 7

Anderson v. Unisys Corp., 47 F.3d 302 (8th Cir. 1995) 6

Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009) 9

Bell Atlantic v. Twombly, 550 U.S. ___ (2007) 8

Bloate v. U.S., 559 U.S. ___ (2010) 9

Blome v. Montana, 2010 U.S. Dist. LEXIS 6058 1

Connecticut National Bank v. Germain, 503 U.S. 249 (1992) 10

Consumer Products Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102 (1980) 10

Friemann v. United States, 547 U.S. 1189 (2006) 8, 11

Griffin v. Oceanic Contractors, Inc., 458 U.S. 564 (1982) 10

Klopfer v. North Carolina, 386 U.S. 21 (1967) 9

Leimer v. State Mutual Life Assurance Co. of Worcester, Mass., 108 F.2d 302 (8th Cir. 1940) 8

Lewis v. United States, 445 U.S. 55 (1980) 10

TABLE OF AUTHORITIES – Continued

Page

Negonsott v. Samuels, 507 U.S. 99 (1993) 10

People v. Galimanis, 728 P.2d 761 (Colo. Ct. App. 1986) 3

Reiter v. Sonotone Corp., 442 U.S. 330 (1979).....10

Rodriquez v. Doral Manufacturing Corp., 57 F.3d 1168 (1st Cir. 1995) 6

Thomson v. Washington, 362 F.3d 969 (7th Cir. 2004) 5

United States v. Hooton, 693 F.2d 857 (9th Cir. 1982) 7

United States v. Saltzman, 984 F.2d 1087 (10th Cir. 1993) 9

United States v. Turkette, 452 U.S. 576 (1981).....9

Zedner v. United States, 547 U.S. 489 (2006).....8, 10

UNITED STATES CONSTITUTION

Amendment VI 2, 9

Amendment XIV 2, 9

STATUTES

The Speedy Trial Act of 1974 (18 U.S.C. §§3161 *et seq.*, Speedy Trial Act, STA, or the "Act").....*passim*

28 U.S.C. § 1254(1) 1

MCA §1-1-105 .....3, 9

TABLE OF AUTHORITIES – Continued

Page

FEDERAL RULES

FRCP 1 ..... 5, 8

FRCP 3 6

FRCP 8 ..... 5, 7

FRCP 8(a)(2) 6

FRCP 8(d)(1) 6

FRCP 12(b)(6) 4, 7, 12

SUPREME COURT RULES

Supreme Court Rule 13 ..... 1, 3

Supreme Court Rule 14 3

OTHER AUTHORITIES

Assize of Clarendon 8

Magna Carta 8

Senate Report No. 96-212 (1979) 9

Marcus, Richard L., *The Revival of Fact Pleading Under the Federal Rules of Civil Procedure* (Columbia Law Review, April 1986) 6

PETITION FOR WRIT OF CERTIORARI

The petitioner, Shirley Richey Blome, respectfully petitions this Court for a writ of certiorari to review the order of the Ninth Circuit Court of Appeals filed on May 19, 2010.

OPINIONS BELOW

The Opinion of the Ninth Circuit Court of Appeals to which this petition relates was filed on May 19, 2010. It is attached hereto at App. 1 and is unpublished. The Order and Judgment of the United States District Court for the State of Montana, Billings Division was filed on January 26, 2010 and is attached hereto at App. 2. It is reported at *Blome v. Montana*, 2010 U.S. Dist. LEXIS 6058.

BASIS FOR JURISDICTION

The decision of the Ninth Circuit Court of Appeals to be reviewed was filed on May 19, 2010. This Petition is filed within 90 days from that date. Rule 13.1. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions involved are:

U.S. Const. Amend. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S. Const. Amend. XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without the process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The United States Statute involved is the **Speedy Trial Act of 1974** (18 U.S.C. §§3161 *et seq.*).

The Montana Code Annotated Statute involved is **Montana Code Annotated §1-1-105**:

> The written law of the State is therefore contained in its Constitution and Statues and in the Constitution and statutes of the United States.

INTRODUCTION

The following brief is presented under the authority of Supreme Court Rules 13 and 14. The brief is also presented in light of what the court observed in *People v. Galimanis*, 728 P.2d 761 (Colo. Ct. App. 1986): "[a] cardinal rule governing . . . the preparation of an appellate brief is that the document be as named – brief!"

STATEMENT OF THE CASE

On August 11, 2005, Petitioner Blome was indicted by the State of Montana. Blome pled not guilty to all charges. A jury trial began 429 days after Blome's initial appearance in the Thirteenth Judicial District Court, Yellowstone County, Montana.

On October 19, 2009, Blome filed a complaint in the United States District Court for the District of Montana, Billings Division in which she alleged violation of the Speedy Trial Act of 1974 (Speedy Trial

Act, STA, or the "Act") by the defendant State of Montana (Montana). (U.S. Dist. Ct. Doc. #1).

Montana filed a Motion to Dismiss and brief under Rule 12(b)(6) of the Federal Rules of Civil Procedure on November 16, 2009.

Blome objected to Montana's Motion to Dismiss. (U.S. Dist. Ct. Doc. #7).

On January 5, 2010, United States Magistrate Judge Carolyn S. Ostby issued a Findings and Recommendation of United States Magistrate to Grant Defendant's Motion to Dismiss. (App. 6). Blome objected to Ostby's findings and recommendation. (U.S. Dist. Ct. Doc. #13).

On January 20, 2010, United States Judge Richard F. Cebull issued his Order Adopting Finding and Recommendations of U.S. Magistrate Judge. (App. 3).

Blome filed her timely Notice of Appeal to the Ninth Circuit Court of Appeals. (U.S. Dist. Ct. Doc. #16).

On March 11, 2010, in the Ninth Circuit Court of Appeals, Clerk of Court Molly C. Dwyer and Deputy Clerk Joe Williams filed an order for Blome to show cause why the judgment of the lower court should not be summarily affirmed based upon a supposition that the question presented in Blome's complaint was insubstantial.

On April 5, 2010, Blome filed her Brief To Show Cause Why The Decision Of The District Court Should Not Be Affirmed Based Upon Clear Error, Requiring Remand For Additional Proceedings. (9th Cir. Ct. Doc. #4). Montana filed its reply brief on April 9, 2010.

On April 19, 2010, Blome filed a Motion for Leave to file a response and submitted the Response on May 3, 2010. (9th Cir. Ct. Doc. #6).

On May 19, 2010, Circuit Judges Leavy, Rawlinson, and Callahan issued their Order affirming the district court's ruling. (App. 1).

REASONS TO GRANT THE PETITION

Reason 1: Review Is Necessary To Give Authority To The Plain Language Of Rule 8 Of The Federal Rules Of Civil Procedure.

The Federal Rules of Civil Procedure "govern the procedure of the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity or in admiralty, with the exceptions stated in Rule 8. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action." FRCP 1.

The Federal Rules of Civil Procedure, adopted in 1938, replaced the old common law system with a deliberately simplified set of rules for trial by notice pleading. *Thomson v. Washington*, 362 F.3d 969 (7th

Cir. 2004). The purpose of drafting the Federal Rules was to devise a procedural system in which the preferred disposition of a case would be on the merits and would not be the result of highly stylized verbal formulations governed by hyper technical rules and used to woo a decision from a judge or jury most of whom were probably so lost in the verbal magic forest that they never really understood what was going on.

Pursuant to Federal Rule 3, "[a] civil action is commenced by filing a complaint with the court." *Anderson v. Unisys Corp.*, 47 F.3d 302 (8th Cir. 1995). The caption page of Blome's Complaint, filed in the U.S. District Court on October 19, 2009, clearly identifies it as a "Complaint."

Under Federal Rule 8(d)(1), there is no technical form required for a complaint; "a complaint is not an anagrammatic exercise in which the pleader must find just exactly the prescribed combination of words and phrases." Marcus, Richard L., *The Revival of Fact Pleading Under the Federal Rules of Civil Procedure* (Columbia Law Review, April 1986).

Rule 8(a)(2) states that a claim shall contain "a short and plain statement of the claim showing that the pleader is entitled to relief." All the Rules require is a "short and plain statement of the claim" that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests. *Rodriquez v. Doral Manufacturing Corp.*, 57 F.3d 1168 (1st Cir. 1995). ¶13 of Blome's Complaint states: "[t]he State of Montana willfully and negligently

violated Shirley Blome's federal secured right to a speedy trial when it failed to commence her trial within the seventy-day time limit prescribed by 18 U.S.C. §§3161 *et seq.*" It is difficult to imagine how her claim could be stated more plainly. Blome asserted the conformity of her complaint to Federal Rule 8 in her Appellate Brief to Show Cause.

All litigants have a constitutional right to have their claims adjudicated according to the rule of precedent. *Anastasoff v. United States*, 223 F.3d 898 (8th Cir. 2000). Blome's Complaint clearly states a claim that, if true, entitles her to relief; alleges facts sufficient to constitute a cause of action; and provides sufficient notice to prompt an intelligent answer from the defendant.

The defendant's Motion to Dismiss for Failure to State a Claim cannot be the result of vagueness or ambiguity on Blome's part. Motions to dismiss for failure to state a claim under Federal Rule 12(b)(6) "are viewed with disfavor and **seldom** granted."

The nature of the charges filed against Blome and the outcome of Blome's trial in the underlying criminal case are irrelevant and immaterial to her claim of violation of the STA. Blome's pleading is not one for any type of post-conviction relief. "[E]ven if Blome had been found not guilty at trial, she would still have a claim of violation of the STA." Accordingly, the *Hooton* standard cited by the Ninth Circuit is inappropriate. *United States v. Hooton*, 693 F.2d 857 (9th Cir. 1982).

The resolution of Blome's Complaint, if she is allowed to proceed, would be a classic example of the "just, speedy, and inexpensive determination of every action" put forward by Federal Rule 1. The Supreme Court in *Bell Atlantic v. Twombly*, 550 U.S. ___ (2007), allowed that a court must proceed "on the assumption that all the allegations in the complaint are true even if doubtful in fact." Blome paid her filing fees for the adjudication of her federal question of violation of the federal statute she chose to present to the court. As in *Leimer v. State Mutual Life Assurance Co. of Worcester, Mass.*, 108 F.2d 302 (8th Cir. 1940), Blome is entitled, "upon averring a claim, to an opportunity to try to prove it, even if it appears (which it does not) that she may not be able to do so."

Reason 2: Review Is Necessary To Give Authority To This Court's Holding That A Criminal Defendant Has A Statutory Right To A Speedy Trial And To Effect Adherence By Lower Courts To The Holding Of This Court In *Zedner v. United States* And *Friemann v. United States*.

The lower court's attempt to toss Blome's claim of violation of the STA into the "insubstantial issue dustbin" is a direct assault on the right to a speedy trial which has ancient origins in the Assize of Clarendon (1166) and in Magna Carta (1215).

The STA applies to the underlying criminal case in the Montana Thirteenth Judicial District Court by virtue of both federal and Montana law. The federal

constitution guarantees the right to a speedy trial in the Sixth Amendment which the Supreme Court "incorporated" into the Fourteenth Amendment in *Klopfer v. North Carolina*, 386 U.S. 21 (1967). Montana Law binds its district courts to the STA with 1-1-105 of the Montana Code Annotated which states: "[t]he written law of the State is therefore contained in its Constitution and Statutes and in the Constitution and statutes of the United States."

Although the STA was designed with the public interest firmly in mind, the Senate Report which accompanies the 1979 amendments to the Act clarifies the interests of both society and the defendant which are addressed by the Act: "[t]he Act seeks to protect and promote speedy trial interests that go beyond the rights of the defendant; although the Sixth Amendment recognizes a societal interest in prompt dispositions, it primarily safeguards the defendant's speedy trial right – which may or may not be in accord with society's. Because of the Act's emphasis on the societal right, a defendant ought not be permitted to waive rights that are not his or hers alone to relinquish." Senate Report No. 96-212 page 29. *See, e.g., United States v. Saltzman*, 984 F.2d 1087 (10th Cir. 1993). And in *Bloate v. U.S.*, 559 U.S. ___ (2010), this Court ruled that an accused may not opt out of the provisions of the STA.

The clear language of the STA is not subject to personal judgments of plausibility evaluation as allowed in *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009). The interpretation of any statute begins with the language of the act itself. *See*, *United States v.*

Turkette, 452 U.S. 576 (1981); *Lewis v. United States*, 445 U.S. 55 (1980); *Reiter v. Sonotone Corp.*, 442 U.S. 330 (1979). When the will of Congress is expressed in reasonably plain terms, that language must generally be regarded as conclusive. *Negonsott v. Samuels*, 507 U.S. 99 (1993), quoting *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564 (1982). When the language is clear, a court need not look further to determine the application of the statute. *American Tobacco Co. v. Patterson*, 456 U.S. 63 (1982); *Consumer Products Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102 (1980). As Justice Scalia, concurring in *Zedner*, said, "We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete." *Connecticut National Bank v. Germain*, 503 U.S. 249 (1992).

Congress succinctly provided parameters for speedy trial violations. 18 U.S.C. §3161(c)(1) clearly states that "[i]n any case in which a plea of not guilty is entered, the trial of a defendant . . . **shall** commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs." This Court pointedly reinforced these parameters and recognized the authority of the STA in *Zedner v. United States*,

547 U.S. 489 (2006) and *Friemann v. United States*, 547 U.S. 1189 (2006).

Adjudication of an alleged violation of the STA is a straightforward assessment by four easily answered questions: (1) when was the accused charged or initially brought to court; (2) what was the accused's plea; (3) if the accused's plea was not guilty, did the trial begin within seventy days; and (4) if the trial did not begin within seventy days, were the causes for delay memorialized by the court in the record? Absent any memorializing of findings on the court record to support any §3161(h)(8) continuances, as is the situation in Blome's case, violation of the STA is a simple exercise in arithmetic.

From the outset, the resolution of Blome's adequately stated claim of violation of the STA has been a simple matter of reading the plain language of the Act and applying it to the facts presented in Blome's Complaint.

Blome's case is ideal for the resolution of the issues presented.

CONCLUSION

For the foregoing reasons, Petitioner requests that the Court grant her Petition for a Writ of Certiorari to review the Opinion and Order of the Ninth Circuit Court of Appeals affirming the district court's granting of the defendants 12(b)(6) Motion to Dismiss.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SHIRLEY RICHEY BLOME, Plaintiff-Appellant, v. THE STATE OF MONTANA, Defendant-Appellee.	No. 10-35171 D.C. No. 1:09-cv-00134-RFC District of Montana, Billings **ORDER** (Filed May 19, 2010)

Before: LEAVY, RAWLINSON and CALLAHAN, Circuit Judges.

A review of the record and the responses to the March 11, 2010 order to show cause indicates that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton,* 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard).

Accordingly, we summarily affirm the district court's judgment.

AFFIRMED.

UNITED STATES DISTRICT COURT

DISTRICT OF MONTANA

BILLINGS DIVISION

Shirley Richey Blome,	)	JUDGMENT IN A
Plaintiff,	)	CIVIL CASE
	)	CV 09-134-BLG-RFC
v.	)	
State of Montana,	)	
Defendant.	)	

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X **Decision by Court.** This action came before the Court for bench trial, hearing, or determination on the record. A decision has been rendered.

IT IS ORDERED AND ADJUDGED that judgment is entered in favor of Defendant, and that this action is DISMISSED.

Dated this 27th day of January, 2010.

PATRICK E. DUFFY, CLERK

By: /s/ T.A. Gesh
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

SHIRLEY RICHEY BLOME,)	**CV 09-134-BLG-RFC**
Plaintiff,)	**ORDER ADOPTING FINDINGS AND RECOMMENDATIONS OF U.S. MAGISTRATE JUDGE**
vs.)	
STATE OF MONTANA,)	
Defendant.)	

On January 5, 2010, United States Magistrate Judge Carolyn Ostby entered Findings and Recommendation (*Doc. 12*) with respect to Defendant's Motion to Dismiss pursuant to Rule 12(b)(6), F.R.Civ.P. Magistrate Judge Ostby recommends that Defendant's motion be granted.

Upon service of a magistrate judge's findings and recommendation, a party has 14 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, Plaintiff filed an objection on January 14, 2010. Plaintiff's objections require this Court to make a *de novo* determination of those portions of the Findings and Recommendations to which objection is made. 28 U.S.C. § 636(b)(1). Plaintiff's objections are not well taken.

After a de novo review, the Court determines the Findings and Recommendation of Magistrate Judge

Ostby are well grounded in law and fact and HEREBY ORDERS they be adopted in their entirety.

Blome's Complaint is barred by the doctrine set forth in *Heck v. Humphrey,* 512 U.S. 477, 486-87 (1994). In *Heck,* the United States Supreme Court held that "in order to recover damages for an allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal," or otherwise declared invalid, called into question by the issuance of a habeas writ, or expunged. *Id.*

Because the Montana Supreme Court affirmed Blome's conviction on direct appeal, Blome cannot make the requisite showing here. *See State v. Blome,* 342 Mont. 550, 182 P.3d 762 (Mont. 2008). Blome also attempted to challenge her conviction in state district court claiming a violation of the federal Speedy Trial Act. *See Blome v. State*, 352 Mont. 16, 214 P.3d 789 (Mont. 2009). The state district court deemed this complaint a petition for post-conviction relief pursuant to Mont. Code Ann. § 46-21-101 and denied the petition pursuant to the procedural bar in Mont. Code Ann. § 46-21-105(2). (*Id.* at ¶ 4). The Montana Supreme Court affirmed the denial in its memorandum decision issued June 9, 2009.

Blome's conviction has not been reversed, declared invalid, expunged, or called into question. Thus, Blome has failed to state a claim upon which

relief may be granted. This is not a defect which could be cured by amendment.

Additionally, the State of Montana is not a "person" subject to suit for money damages pursuant to 42 U.S.C. § 1983. "Section 1983 provides a federal forum to remedy many deprivations of civil liberties, but it does not provide a federal forum for litigants who seek a remedy against a State for alleged deprivations of civil liberties. The Eleventh Amendment bars such suits unless the State has waived its immunity." *Will v. Michigan Department of State Police,* 491 U.S. 58, 66, 109 S.Ct. 2304, 2309 105 L.Ed.2d 45 (1989).

Accordingly, **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss (*Doc. 4*) is **GRANTED**. Plaintiff's Complaint is **DISMISSED WITH PREJUDICE** for failure to state a claim upon which relief may be granted.

The Clerk of Court is direct to close this matter and enter judgment in favor of Defendant, pursuant to Rule 58, F.R.Civ.P.

DATED this 26 day of January, 2010.

/s/ Richard F. Cebull
RICHARD F. CEBULL
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

SHIRLEY RICHEY BLOME, Plaintiff, vs. STATE OF MONTANA, Defendants.	Cause No. CV 09-00134-BLG-RFC-CSO FINDINGS AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE TO GRANT DEFENDANT'S MOTION TO DISMISS

This matter is pending on Plaintiff Shirley Richey Blome's Complaint filed October 19, 2009. Blome alleges the State of Montana violated her federal speedy trial right. Defendant filed a Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure on November 16, 2009.

I. STATEMENT OF THE CASE

A. Parties

Blome was convicted of embezzlement and forgery on December 21, 2006, in state district court. (Court Doc. 1 – Complaint, p. 3, ¶ 12). Blome is not currently incarcerated but remains on probation as a result of the conviction. (Court Doc. 5-1 (Judgment and Order Suspending Sentence). The sole Defendant is the State of Montana.

B. Allegations

Blome alleges the State of Montana willfully and negligently violated her federal right to a speedy trial when it failed to commence her state criminal trial within the seventy-day time limit prescribed by 18 U.S.C. §§ 3161 et seq. She seeks reversal of her conviction, dismissal of the indictment with prejudice, and monetary damages.

II. ANALYSIS

A. Standard

Defendant filed its Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, requesting the Court dismiss this matter for failure to state a claim upon which relief can be granted. In ruling on Defendant's Motion to Dismiss, review is limited to the contents of the Complaint. *Clegg v. Cult Awareness Network,* 18 F.3d 752, 754 (9th Cir. 1994). A plaintiff's factual allegations must be taken as true and construed in the light most favorable to the plaintiff. *Livid Holdings Ltd. v. Salomon Smith Barney, Inc.*, 416 F.3d 940, 946 (9th Cir. 2005). Although a complaint does not need to include detailed facts to survive a Rule 12(b)(6) motion to dismiss, a plaintiff must do more than recite the formulaic elements of a cause of action. . *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1965-66 (2007). The plaintiff must include enough facts to raise a reasonable expectation that discovery will reveal evidence. In other words, the plaintiff must allege enough facts to state a claim for relief that is plausible on its face. *Id.*

at 1974. [C]onclusory allegations without more are insufficient to defeat a motion to dismiss for failure to state a claim." *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 810 (9th Cir. 1988).

When a plaintiff appears pro se, the court has an obligation to construe the plaintiff's complaint liberally. See *Bernhardt v. Los Angeles County*, 339 F.3d 920, 925 (9th Cir. 2003); *Jackson v. Carey*, 353 F.3d 750, 757 (9th Cir. 2003). "'A pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.'" *Erickson v. Pardus*, 127 S.Ct. 2197, 2200 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S.Ct. 285 (1976)); Cf. Fed. Rule Civ. Proc. 8(f) ("All pleadings shall be so construed as to do substantial justice"). Pro se plaintiffs in a civil rights action must be afforded the benefit of any doubt. See *Karim-Panahi v. Los Angeles Police Dept.*, 839 F.2d 621, 623 (9th Cir. 1988). "A pro se litigant must be given leave to amend his or her complaint unless it is 'absolutely clear that the deficiencies of the complaint could not be cured by amendment.'" *Id.* (quoting *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987)).

B. Analysis

Defendant is correct that Blome's Complaint is barred by the doctrine set forth in *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). In *Heck*, the United States Supreme Court held that "in order to recover damages for an allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions

whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal," or otherwise declared invalid, called into question by the issuance of a habeas writ, or expunged. *Id.*

Because the Montana Supreme Court affirmed Blome's conviction on direct appeal, Blome cannot make the requisite showing here. See *State v. Blome,* 342 Mont. 550, 182 P.3d 762 (Mont. 2008). Blome also attempted to challenge her conviction in state district court claiming a violation of the federal Speedy Trial Act. See *Blome v. State*, 352 Mont. 16, 214 P.3d 789 (Mont. 2009). The state district court deemed this complaint a petition for post-conviction relief pursuant to Mont. Code Ann. § 46-21-1.01 and denied the petition pursuant to the procedural bar in Mont. Code Ann. § 46-21-105(2). (*Id.* at ¶ 4). The Montana Supreme Court affirmed the denial in its memorandum decision issued June 9, 2009.

Blome's conviction has not been reversed, declared invalid, expunged, or called into question. Thus, she has failed to state a claim upon which relief may be granted. This is not a defect which could be cured by amendment.

Defendant also correctly argues that the State of Montana is not a "person" subject to suit for money damages pursuant to 42 U.S.C. § 1983. "Section 1983 provides a federal forum to remedy many deprivations of civil liberties, but it does not provide a federal forum for litigants who seek a remedy against a State

for alleged deprivations of civil liberties. The Eleventh Amendment bars such suits unless the State has waived its immunity." *Will v. Michigan Department of State Police*, 491 U.S. 58, 66, 109 S.Ct. 2304, 2309 105 L.Ed.2d 45 (1989).

III. CONCLUSION

Defendant's Motion to Dismiss should be granted as Blome's claims are barred by the Heck doctrine and the State of Montana has Eleventh Amendment immunity from claims for money damages.

Based upon the foregoing, the Court issues the following:

RECOMMENDATION

1. The State of Montana's Motion to Dismiss (Court Doc. 4) should be GRANTED and Blome's Complaint should be DISMISSED WITH PREJUDICE for failure to state a claim upon which relief may be granted.

2. The Clerk of Court should be directed to close this matter and enter judgment in favor of Defendant pursuant to Rule 58 of the Federal Rules of Civil Procedure.

NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATION AND CONSEQUENCES OF FAILURE TO OBJECT

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Findings

and Recommendation within fourteen (14) days of the date entered as indicated on the Notice of Electronic Filing. Any such filing should be captioned "Objections to Magistrate Judge's Findings and Recommendation."

A district judge will make a de novo determination of those portions of the Findings and Recommendation to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendation. Failure to timely file written objections may bar a de novo determination by the district judge and may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

This is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed.R.Civ.P. 4(a)(1), should not be filed until entry of the District Court's final judgment.

DATED this 5th day of January, 2010.

/s/ Carolyn S. Ostby
Carolyn S. Ostby
United States
Magistrate Judge